

Internal Revenue Service

Number: **200820016**
Release Date: 5/16/2008
Index Number: 121.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
_____, ID No.
Telephone Number:

In Re:

Refer Reply To:
CC:ITA:5
PLR-138585-07
Date:
February 07, 2008

LEGEND

Taxpayer:
Residence:
Date 1:
Date 2:
Month 1:

Dear _____ :

This responds to your letter dated August 20, 2007, requesting a ruling on whether you are eligible to exclude gain from the sale of a residence under § 121(c) of the Internal Revenue Code.

FACTS

On Date 1, Taxpayer purchased and moved into the Residence to be used as her primary residence for herself and her two daughters. In Month 1, one of the daughters, while riding the school bus, was subjected to unruly behavior, verbal abuse, and sexual assault. After the traumatic nature of the crimes, the daughter suffered from persistent fear, and her performance at school started to deteriorate dramatically. The daughter's behavioral change was noticed by the faculty at the school and Taxpayer. Taxpayer tried to work with the school district to resolve these problems, but finally sold the Residence on Date 2 to move her daughter away from the problems.

On Date 2, Taxpayer had not owned and used the Residence as Taxpayer's principal residence for two years during the five-year period preceding the sale. However, Taxpayer requests that she be entitled to exclude the gain from the sale of the Residence under the reduced maximum exclusion provisions of § 121(c).

LAW AND ANALYSIS

Section 121(a) provides that gain from the sale or exchange of property is not included in gross income if, during the 5-year period ending on the date of the sale or exchange, the taxpayer has owned and used the property as the taxpayer's principal residence for periods aggregating two years or more.

Section 121(b)(1) provides the general rule for the maximum exclusion of gain. Section 121(b)(3) provides that subsection (a) shall not apply to any sale if, during the 2-year period ending on the date of the sale, there was any other sale or exchange by the taxpayer to which subsection (a) applied.

Section 121(c) provides for a reduced maximum exclusion when a taxpayer fails to satisfy the ownership and use requirements of subsection (a) if the primary reason for the sale is the occurrence of employment, health, or unforeseen circumstances.

The reduced maximum exclusion is computed by multiplying the applicable maximum exclusion by a fraction. The numerator of the fraction is the shortest of the following periods: (1) the period of time that the taxpayer owned the property during the 5-year period ending on the date of the sale; (2) the period of time that the taxpayer used the property as the taxpayer's principal residence during the 5-year period ending on the date of the sale; or (3) the period of time between the date of a prior sale or exchange of property for which the taxpayer excluded gain under section 121 and the date of the current sale. The numerator of the fraction may be expressed in days or months. The denominator of the fraction is 730 days or 24 months (depending on the measure of time used in the numerator).

Section 1.121-3(b) of the Income Tax Regulations provides that all the facts and circumstances of a sale will determine whether the primary reason for the sale is the occurrence of unforeseen circumstances. Factors that may be relevant in determining the primary reason for a sale include the following: (1) the sale and the circumstances giving rise to the sale are proximate in time; (2) the suitability of the property as the taxpayer's residence materially changes; (3) the taxpayer's financial ability to maintain the property is materially impaired; (4) the taxpayer uses the property as the taxpayer's residence during the period of the taxpayer's ownership of the property; (5) the circumstances giving rise to the sale are not reasonably foreseeable when the taxpayer begins using the property as the taxpayer's principal residence; and (6) the circumstances giving rise to the sale occur during the period of the taxpayer's ownership and use of the property as the taxpayer's principal residence.

Section 1.121-3(e)(1) provides that a sale is by reason of unforeseen circumstances if the primary reason for the sale is the occurrence of an event that the taxpayer could not reasonably have anticipated before purchasing and occupying the residence. Section

1.121-3(e)(3) states that the Commissioner may issue rulings addressed to specific taxpayers identifying events or situations as unforeseen circumstances with regard to those taxpayers.

Based on the facts, representations, and the relevant law, we conclude that Taxpayer's primary reason for the sale was the occurrence of unforeseen circumstances. Consequently, even though Taxpayer sold the Residence before Taxpayer had owned and used it as Taxpayer's principal residence for two of the preceding five years, Taxpayer is granted permission to exclude gain up to the reduced maximum exclusion amount under § 121(c).

Caveats

Except as expressly provided, we express no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter ruling must be attached to any income tax return to which it is relevant. Alternatively, if taxpayers file a return electronically, taxpayers may attach a statement to the return that provides the date and control number of the letter ruling.

The ruling contained in this letter is based upon information and representations submitted by the taxpayers and accompanied by a penalty of perjury statement executed by the taxpayers. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely yours,

George F. Wright
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)